

**SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES**

**JOE FOSS BUILDING
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501-3181**

draft

**SURFACE WATER DISCHARGE PERMIT
AUTHORIZING DISCHARGE
UNDER THE
SOUTH DAKOTA SURFACE WATER DISCHARGE SYSTEM**

In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota, Article 74:52,

the *City of Bridgewater*

is authorized under this permit to discharge to

an *Unnamed Tributary of Wolf Creek*

from its wastewater treatment facility located about one mile southwest of the city in the northeast ¼ of Section 23, Township 101 North, Range 56 West, in McCook County, South Dakota (Latitude 43.537975°, Longitude -97.515976°), in accordance with discharge points, effluent limits, monitoring requirements, and other conditions set forth herein. Authorization is limited to those outfalls specifically listed in the permit. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the South Dakota Water Pollution Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

This permit shall become effective [Permit Effective Date].

This permit and the authorization to discharge shall expire at midnight, [Expiration Date].

Signed this day of

Authorized Permitting Official

Steven M. Pirner
Secretary
Department of Environment and Natural Resources

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DEFINITIONS

30-day (and monthly) average means the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.

7-day (and weekly) average means the arithmetic mean of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. The calendar week which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains the Saturday.

ARSD means the Administrative Rules of South Dakota.

An **Authorized Release** is a discharge from a permitted outfall that meets all permit conditions and effluent limits.

BOD₅ means Five-Day Biochemical Oxygen Demand. BOD is a measurement of the amount of oxygen utilized by the decomposition of organic material, over a specified time period (usually 5 days) in a sample.

A **Bypass** is the intentional diversion of waste streams from any portion of a treatment facility. Bypasses do not include releases from the sanitary sewer collection system (see sanitary sewer overflow) or unauthorized releases from the treatment facility (see unauthorized release). Bypasses may result in a discharge or unauthorized release.

Composite samples shall be flow proportioned. The composite sample shall contain at least four samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:

1. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;
2. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;
3. Constant sample volume, time interval between samples proportional to flow (i.e., sample taken every "X" gallons of flow); and,
4. Continuous collection of sample, with sample collection rate proportional to flow rate.

Daily maximum (Daily Max.) is the maximum value allowable in any single sample or instantaneous measurement.

A **Grab** sample, for monitoring requirements, is a single "dip and take" sample collected at a representative point in the discharge stream.

An **Instantaneous measurement**, for monitoring requirements, is a single reading, observation, or measurement either taken at the facility or within 15 minutes of the sample.

MGD is the measure of flow rate meaning million gallons per day.

pH is the measure of the hydrogen ion concentration of water or wastewater; expressed as the negative log of the hydrogen ion concentration. A pH of 7 is neutral. A pH less than 7 is acidic, and a pH greater than 7 is basic.

A **Publicly-owned treatment works** or **POTW** is any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial waste of a liquid nature which is owned by the state or a municipality. This term includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

A **Sanitary sewer overflow** is the intentional or unintentional discharge of untreated sewage from the sanitary sewer collection system, including sewer lines, manholes, lift stations, etc.

SDDENR means the South Dakota Department of Environment and Natural Resources.

Secretary means the Secretary of the South Dakota Department of Environment and Natural Resources, or authorized representative.

Severe property damage is substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Sewage sludge is any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes but is not limited to solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet pumpings, and sewage sludge products. Sewage sludge does not include grit, screenings, or ash generated during the incineration of sewage sludge.

TSS means **Total Suspended Solids**. TSS is a measure of the filterable solids present in a sample.

An **Unauthorized release** is a discharge from the lower end of the treatment or containment system through a release structure or over or through retention dikes that does not meet all permit conditions or effluent limits. An unauthorized release is distinguished from a sanitary sewer overflow in that a sanitary sewer overflow discharges wastewater prior to treatment or containment.

An **Upset** is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limits because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

1.0 EFFLUENT LIMITS AND MONITORING REQUIREMENTS

1.1 Description of Discharge Points

The authorization to discharge provided under this permit is limited to the outfall specifically designated below as discharge locations. Discharges at any location not authorized under this permit is a violation of the South Dakota Water Pollution Control Act and could subject the person(s) responsible for such discharge to penalties under Section 34A-2-75 of the Act. Knowingly discharging from an unauthorized location or failing to report an unauthorized discharge within a reasonable time from the permittee first learning of an unauthorized discharge could subject the permittee to penalties as provided under the South Dakota Water Pollution Control Act.

Outfall Number	Description of Discharge Points
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001	Any discharge from the artificial wetlands to an unnamed tributary of Wolf Creek (Latitude 43.537975°, Longitude -97.515976° – Navigational Quality GPS).
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1.2 Effluent Limits – *Outfall 001*

No discharge shall occur until permission for discharge is granted by the South Dakota Department of Environment and Natural Resources.

Effective immediately and lasting through the life of this permit, the quality of effluent discharged by the facility shall, as a minimum, meet the limits as set forth below:

Effluent Characteristic	Effluent Limit		
	30-Day Average ¹	7-Day Average ¹	Daily Maximum ¹
Five-Day Biochemical Oxygen Demand, mg/L	30	45	N/A
Total Suspended Solids, mg/L ²	30	45	N/A
Fecal Coliform, no./100 mL ³ (May 1 – September 30)	1,000	N/A	2,000
Ammonia-Nitrogen (as N), mg/L April 1—September 30 October 1—March 31	2.1 11.6	N/A	3.8 20.3
The pH of the discharge shall not be less than 6.5 standard units or greater than 9.0 standard units in any sample.			
No chemicals, such as chlorine, shall be used without prior written permission.			

¹ See Definitions.

² If analytical results for BOD₅ show compliance with the permit limits, the permittee may request TSS permit limits of 90 mg/L (30-day average) and 135 mg/L (7-day average). **The Secretary may approve these alternate limits without additional public notice.**

³ Fecal Coliform organisms from May 1 to September 30 shall not exceed a concentration of 1,000 per 100 milliliters as a geometric mean based on a minimum of 5 samples obtained during separate 24-hour periods for any calendar month. They shall not exceed 2,000 per 100 milliliters in any one sample from May 1 to September 30.

1.3 Pre-Discharge Sampling Requirements

Prior to the start of any discharge from the facility, the permittee shall collect a grab sample from each cell from which it will discharge and have the sample analyzed for the following parameters:

1. Five-Day Biochemical Oxygen Demand, mg/L
2. Total Suspended Solids, mg/L
3. pH, s.u.
4. Fecal Coliform, no./100 mL
5. Ammonia-Nitrogen, mg/L
6. Water Temperature, °C

The results of the analyses, along with a request to discharge, shall be submitted to the Secretary. The request to discharge shall explain why a discharge is needed, when the discharge would start, the expected duration of the discharge, and the approximate volume of water to be discharged. The estimated flow condition of the receiving water shall also be reported (i.e. dry, low, normal, high). No discharge shall occur until permission has been granted by the Secretary.

1.4 Self-Monitoring Requirements

All discharges, sanitary sewer overflows, and unauthorized releases shall be monitored for the following parameters at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge.

Effluent Characteristic	Frequency	Reporting Values ¹	Sample Type ¹
Duration of Discharge, days	Monthly	Monthly Total ²	Calculate
Total Flow, million gallons	Monthly	Monthly Total	Calculate
Flow Rate, MGD	At least three per discharge ³	Daily Maximum; 30-Day Average	Instantaneous
pH, standard units	At least three per discharge ³	Daily Minimum; Daily Maximum	Instantaneous ^{4,5}
Water Temperature, °C ⁶	At least three per discharge ³	Daily Maximum; 30-Day Average	Instantaneous ⁵
Ammonia-Nitrogen (as N), mg/L	At least three per discharge ³	Daily Maximum; 30-Day Average	Grab ⁵
Five-Day Biochemical Oxygen Demand, mg/L	At least three per discharge ³	Maximum 7-Day Average; 30-Day Average	Grab
Total Suspended Solids, mg/L	At least three per discharge ³	Maximum 7-Day Average; 30-Day Average	Grab
Fecal Coliform, no./100 mL	At least three per discharge ^{3,7}	Daily Maximum; 30-Day Geometric Mean	Grab

¹ See Definitions.

² The date and time of the start and termination of each discharge shall also be reported in the comment section of the DMR.

³ At the initiation of any discharge, three samples shall be taken the first week and one sample each week for the following three weeks. Samples shall be taken once per month thereafter, until the discharge is discontinued. If a discharge is less than one week in duration, a sample shall be taken at the beginning, middle, and end of the discharge. If a discharge becomes intermittent, due to losses from evaporation and percolation, the discharge shall be sampled once per week during any week that flow is noted. All of the samples collected during the 7-day or 30-day period are to be used in determining the averages. The permittee always has the option of collecting additional samples if appropriate.

⁴ pH shall be taken within 15 minutes of sample collection with a pH meter. The pH meter must be capable of simultaneous calibration to two points on the pH scale that bracket the expected pH and are approximately three standard units apart. The pH meter must read to 0.01 standard units and be equipped with temperature compensation adjustment.

⁵ The pH and temperature of the effluent shall be determined when ammonia samples are collected.

⁶ The water temperature of the effluent shall be taken as a field measurement. Measurement shall be made with a mercury-filled, or dial type thermometer, or a thermistor. Readings shall be reported to the nearest whole degree Celsius.

⁷ For fecal coliform, if a minimum of five samples are collected in a calendar month, all of the samples collected are to be used in determining the geometric mean. Samples are to be collected at the same time BOD₅, TSS, etc. Additional samples are to be collected during any other separate 24-hour periods. If less than five samples are taken during any calendar month, the maximum limit still applies. ***This sampling protocol for fecal coliform only applies if the discharge occurs between May 1 and September 30.***

1.5 Inspection Requirements

The permittee shall inspect its wastewater treatment facility and the outfall on at least a **monthly** basis. During a discharge, the permittee shall inspect the facility on at least a **weekly** basis. The inspection shall be conducted to determine if a discharge is occurring, has occurred since the previous inspection, and/or if a discharge is likely to occur before the next inspection. In addition, the inspection shall be performed to determine if proper operation and maintenance procedures are being undertaken at the wastewater treatment facility. Lift stations shall be inspected **daily** while in operation. The permittee shall maintain a notebook recording information obtained during the inspection. At a minimum, the notebook shall include the following:

1. Date and time of the inspection;
2. Name of the inspector(s);
3. The facility's discharge status;
4. The measured amount of freeboard or water depth in each pond and wetland;
5. Identification of operational problems and/or maintenance problems;
6. Recommendations, as appropriate, to remedy identified problems;
7. A brief description of any actions taken with regard to problems identified; and,
8. Other information, as appropriate.

The permittee shall maintain the notebook in accordance with proper record-keeping procedures and shall make the notebook available for inspection, upon request, by the Secretary or the U.S. Environmental Protection Agency.

2.0 MONITORING, RECORD KEEPING, AND REPORTING REQUIREMENTS

2.1 Representative Sampling

Samples taken in compliance with the monitoring requirements established under this permit shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

2.2 Monitoring Procedures

Monitoring shall be conducted according to test procedures approved under ARSD §74:52:03:06, a.b.r. 40 CFR, Part 136, unless other test procedures have been specified in this permit.

2.3 Reporting of Monitoring Results

Effluent monitoring results obtained during the previous three months shall be summarized for each month, reported on separate Discharge Monitoring Report Forms (EPA No. 3320-1), and submitted to SDDENR on a **quarterly** basis. These must be postmarked no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with Section 2.4 and submitted to the Secretary at the following address:

original to: SD Department of Environment & Natural Resources
Surface Water Quality
PMB 2020
Joe Foss Building
523 East Capitol
Pierre SD 57501-3182

2.4 Signatory Requirements

All applications, reports or information submitted to the Secretary shall be signed and certified.

1. All permit applications shall be signed by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by the Secretary shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above and submitted to the Secretary; and,
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of superintendent or equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may be either a named individual or any individual occupying a named position.)
3. If an authorization under 2.a above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the Secretary.
4. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2.5 Additional Monitoring by the Permittee

If the permittee monitors, at the designated points, any pollutant more frequently than required by this permit, using test procedures approved under ARSD §74:52:03:06, a.b.r. 40 CFR 136 or as specified in this permit, the results of this monitoring shall be used in determining compliance with this permit.

2.6 Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The initials or names of the individuals who performed the sampling or measurements;
3. The dates analyses were performed;
4. The time analyses were initiated;
5. The initials or names of individuals who performed the analyses;
6. References and written procedures, when available, for the analytical techniques or methods used; and,
7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

2.7 Duty to Provide Information

The permittee shall furnish to the Secretary, within a reasonable time, any information the Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Secretary, upon request, copies of records required to be kept by this permit.

2.8 Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Secretary, it shall promptly submit such facts or information.

2.9 Planned Changes

The permittee shall give notice to the Secretary as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged, or could result in noncompliance with permit conditions.

2.10 Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the Secretary at any time. Data collected on site, copies of Discharge Monitoring Reports, and a copy of this permit must be maintained on site during the duration of the permitted activity.

2.11 Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any emergency related to this permit or permitted-facility that may endanger health or the environment as soon as possible, but no later than twenty-four (24) hours after becoming aware of the circumstances. The report shall be made to the Secretary at (605) 773-3351 during regular business hours, or to South Dakota Emergency Management at (605) 773-3231 any other time.
2. Instances of noncompliance, unanticipated bypasses, sanitary sewer overflows, unauthorized releases, and upsets shall be reported to the Secretary at (605) 773-3351 by the first workday (8:00 a.m. - 5:00 p.m. Central Time) following the day the permittee became aware of the circumstances.
3. A written submission shall also be provided within five days of becoming aware of the circumstances above. The written submission shall contain:
 - a. A description of the event and its cause;
 - b. The period of the event, including exact dates and times;
 - c. The estimated time the event is expected to continue if it has not been corrected; and,
 - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the event.
4. The Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Surface Water Quality Program, South Dakota Department of Environment and Natural Resources, Pierre, (605) 773-3351.
5. Reports shall be submitted in accordance with Sections 2.3 and 2.4.

The permittee shall give advance notice to the Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

2.12 Other Noncompliance Reporting

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Section 2.3 are submitted. The reports shall contain the information listed in Section 2.11.

2.13 Permit Transfers

This permit may be transferred to a new permittee if:

1. The current permittee notifies the Secretary at least 30 days in advance of the proposed transfer date; and
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

The Secretary will notify the existing and new permittee of his or her intent to transfer, modify, or revoke and reissue the permit based on the information received and other permit information.

3.0 COMPLIANCE REQUIREMENTS

3.1 Duty to Comply

The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3.2 Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3.3 Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and treatment and control systems (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit or other conditions required by the Secretary upon issuance. This may include the maintenance of freeboard levels of lagoons or holding ponds. Proper operation and maintenance may also include adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

3.4 Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3.5 Inspection and Entry

The permittee shall allow the Secretary or EPA, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the South Dakota Water Pollution Control Act, any substances or parameters at any location.

3.6 Removed Substances

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard in accordance with applicable requirements of SDCL 34A-2, -6, and -11.

3.7 Bypass of Treatment Facilities

1. Anticipated Bypass. Anticipated bypasses causing violation of effluent limits are prohibited, unless the Secretary approves the anticipated bypass after considering its adverse effects and determines that it will meet the following conditions:
 - a. The bypass was unavoidable to prevent loss of life, threat to public health, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment

should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

- c. The permittee submitted notices as required under paragraph 3 of this section.
2. Anticipated Bypass Not Causing Violations. The permittee may allow anticipated bypasses to occur which do not cause effluent limit violations, but only if for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 1 and 3 of this section.
3. Notice of Bypass:
 - a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice at least 10 days before the date of the bypass.
 - b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Section 2.11.

3.8 Sanitary Sewer Overflows

1. Reporting. Overflows from the sanitary sewer collection system shall be reported to the Secretary at (605) 773-3351 as soon as possible, but no later than the first business day after becoming aware of the sanitary sewer overflow. Anticipated overflows shall be reported in advance, if possible. In addition to verbal notification, the permittee shall submit to the Secretary a written report in accordance with Section 2.11, paragraphs 3 and 4.
2. Sampling. Sanitary sewer overflows shall be sampled at the same or similar frequency and for the same parameters as required for permitted outfalls. The results shall be included with the written report required in paragraph 1.
3. Plan Development. In the event that the Secretary notifies the permittee of the need to develop a capacity, management, operation, and maintenance program in order to address, reduce, or eliminate the frequency of sanitary sewer overflows, the permittee shall submit such a plan to the Secretary. The plan shall, at a minimum, address the following areas:
 - a. Sewer management program: This program includes personnel organizational structure, training, communication information systems, noncompliance notification program, and other appropriate items;
 - b. Collection system operation program: This program includes operational budgeting, monitoring, safety, emergency preparedness and response, pump stations, operational recordkeeping, and other appropriate items;
 - c. Collection system maintenance program: This program includes maintenance budgeting, planned and unplanned maintenance; sewer cleaning; maintenance recordkeeping, parts and equipment inventory, and other appropriate items; and
 - d. Sewer system capacity evaluation: The capacity evaluation includes the following:
 1. System inventory (sewer locations, sizes, slopes, materials, age, condition, etc.);
 2. Identification of problem areas (overflows, surcharged lines, basement backups, etc.);
 3. Capacity evaluation of problem areas (utilizing flow and precipitation records, infiltration and inflow investigation, manhole and pipe inspections and televising, smoke and dye testing, and building inspections); and
 4. Sewer rehabilitation recommendations.

Upon the Secretary's approval of the plan, the permittee shall implement the plan.

3.9 Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limits if the requirements of paragraph 2. of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limits).
2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required under Section 2.11; and,
 - d. The permittee complied with mitigation measures required under Section 3.2.
3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

3.10 Industrial Wastes

1. Each significant industrial user must be identified as to qualitative and quantitative characteristics of the discharge as well as production data. A significant industrial user is defined as an industrial user discharging to a publicly owned treatment works (POTW) that satisfies any of the following: (1) has a process wastewater flow of 25,000 gallons or more per average work day or contributes five percent or more of the average dry weather hydraulic or organic capacity of the municipal system receiving the waste; (2) is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N or; (3) is determined by the Control Authority to have a reasonable potential to adversely impact the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).
2. The permittee shall notify the Secretary of any new introductions by new or existing significant industrial users or any substantial change in pollutants from any significant industrial user. Such notice must contain the information described in paragraph 1 above and be forwarded no later than 60 days following the introduction or change.
3. Pretreatment Standards [ARSD §74:52:11:01, a.b.r. 40 CFR 403.5] developed pursuant to Section 307 of the Federal Clean Water Act require that under no circumstances shall the permittee allow the introduction of the following pollutants to the POTW from any source of nondomestic discharge:
 - a. Pollutants which create a fire or explosion hazard in the POTW, including but not limited to, wastestreams with a closed cup flashpoint of less than 60 degrees Celsius (140 degrees Fahrenheit) using the test methods specified in ARSD §74:28:22:01, a.b.r. 40 CFR 261.21;
 - b. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0 standard units unless the works are specifically designed to accommodate such discharges;

- c. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW, or other interference with the operation of the POTW;
 - d. Any pollutant, including oxygen demanding pollutants (e.g., BOD), released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW;
 - e. Heat in amounts which will inhibit biological activity in the POTW resulting in interference but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40 degrees Celsius (104 degrees Fahrenheit);
 - f. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;
 - g. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
 - h. Any trucked or hauled pollutants, except at discharge points designated by the POTW;
 - i. Any pollutant which causes pass through or interference; and,
 - j. In addition to the general limits expressed above, more specific pretreatment limits have been promulgated for specific industrial categories under Section 307 of the Federal Clean Water Act (see ARSD, Chapter 74:52:10, a.b.r. 40 CFR Subchapter N, Parts 405 through 471, for specific information).
4. The permittee shall provide adequate notice to the Secretary of any substantial change in the volume or character of pollutants being introduced into the POTW by an industrial user. For the purposes of this section, adequate notice shall include information on:
- a. The quality and quantity of effluent to be introduced into the POTW; and,
 - b. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
5. The Secretary retains the right to take legal action against the industrial user and/or the permittee, in those cases where a permit violation has occurred because of the failure of an industrial user to discharge at an acceptable level.

3.11 Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain coverage under a new permit. The permit application must be submitted at least 180 days before the expiration date of this permit. Periodically during the term of this permit and at the time of reissuance, the permittee may be requested to reaffirm its eligibility to discharge under this permit.

3.12 Availability of Reports

Except for data determined to be confidential under ARSD §74:52:02:17, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of SDDENR. Permit applications, permits, and effluent data shall not be considered confidential.

3.13 Property Rights

The Secretary's issuance of this permit, adoption of design criteria, and approval of plans and specifications, does not convey any property rights of any sort, any exclusive privileges, any authorization to damage, injure or use any private property, any authority to invade personal rights, any authority to violate federal, state or local laws or regulations, or any taking, condemnation or use of eminent domain against any property owned by third parties. The State does not warrant that the permittee's compliance with this permit, design criteria, approved plans and specifications, and operation under this permit, will

not cause damage, injury or use of private property, an invasion of personal rights, or violation of federal, state or local laws or regulations. The permittee is solely and severably liable for all damage, injury or use of private property, invasion of personal rights, infringement of federal, state or local laws and regulations, or taking or condemnation of property owned by third parties, which may result from actions taken under the permit.

3.14 Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

3.15 Reopener Provision

This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limits (and compliance schedules, if necessary), or other appropriate requirements if one or more of the following events occurs:

1. Water Quality Standards: The water quality standards of the receiving waters applicable to this general permit are modified in such a manner as to require different effluent limits than contained in this permit.
2. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limits than contained in this permit.
3. Effluent Guidelines: Effluent limit guidelines are promulgated or revised for point sources covered by this permit;
4. Total Maximum Daily Load: Additional controls in the permit are necessary to implement a total maximum daily load approved by the Secretary and/or EPA.
5. Whole Effluent Toxicity: Whole effluent toxicity is detected in the discharge.
6. Noncompliance: The discharger is a significant contributor of pollution to waters of the state, presents a health hazard, or is in noncompliance with the conditions of the permit; or
7. Other Changes: Other conditions or standards change so that the discharge no longer qualifies for this permit, such as the permittee being designated as a major discharger, changes in necessary influent or effluent pollutant monitoring, additional industrial pretreatment requirements become applicable to the permittee, or other items.

3.16 Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause, including failure to comply with any provision of this permit or any condition imposed by the Secretary upon granting coverage under this permit. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

4.0 PENALTIES FOR NONCOMPLIANCE

4.1 Penalties for Violations of Permit Conditions

Any person who violates a permit condition is in violation of the provisions of SDCL 34A-2-36, and is subject to penalties under SDCL 34A-2-75. In addition to a jail sentence authorized by SDCL 22-6-2, such violators are subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state. Except as provided in Sections 3.6 and 3.8, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

4.2 Penalties for Tampering

Any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit is in violation of the provisions of SDCL 34A-2-77, and is subject to penalties under SDCL 34A-2-75. In addition to a jail sentence authorized by SDCL 22-6-2, such violators are subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state.

4.3 Penalties for Falsification of Reports

Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, is in violation of the provisions of SDCL 34A-2-77, and is subject to penalties under SDCL 34A-2-75. In addition to a jail sentence authorized by SDCL 22-6-2, such violators are subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment of this state.

4.4 Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude SDDENR from taking any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Federal Clean Water Act.